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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/622,600	07/18/2003	Wayne McCullough	40031-6	4303
7590	08/10/2005			
Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137			EXAMINER CARIASO, ALAN B	
			ART UNIT 2875	PAPER NUMBER
DATE MAILED: 08/10/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/622,600	<b>Applicant(s)</b> MCCULLOUGH ET AL.	
	<b>Examiner</b> Alan Cariaso	<b>Art Unit</b> 2875	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☒ Claim(s) 4, 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of response filed June 6, 2005 is acknowledged. Claims 1-14 are pending. Amendment of the specification and replacement drawing sheet are included in the response.
2. The oath/declaration filed on June 6, 2005 under 37 CFR 1.131 is sufficient to overcome the McClanahan (US 2003/0202341 A1) reference.

### ***Drawings***

3. The drawings (i.e. replacement drawing sheet of figure 1) were received on June 6, 2005. These drawings are approved.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by TAKASU (US 2002/0027777 A1).
6. TAKASU discloses a kit comprising: a length of wire (as illustrated in fig.3 between 38,41,35 and 34), at least one switch (35), a plurality of light emitting diodes (38 or 53 in fig.6), a battery holder (32) and a circuit diagram (fig.3 or fig.4b), wherein

said switch (35), said diodes (38,53), and said battery holder (32) are adapted to be fitted (by installation of parts or varying the layout, see paragraphs 0018, 0021-0023) on or in the headset (21) to be connected to create a circuit according to the circuit diagram (figs.3,4b); further comprising a battery (34) adapted to fit in the battery holder (32).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over EICHOST (US 4,969,069) in view of MYERS et al (US 5,751,825) and LEHRER (US 6,290,368).

9. EICHOST discloses a headset (10) comprising a pair of ear cups (11,12), each having a shell (casings 21,22), said shell (21,22) having an opening (inner openings 34,36 in fig.2) for fitting adjacent an ear; a band (13,19) connecting said ear cups (11,12) and adapted to fit over a wearer's head; at least one wire (16 or 40) connected at a first place (17 or 39) and at a second place to an adaptor (col.2, lines 46-48); at least one light-emitting member (light 14,fig.1 or 27, fig.2) attached to a first of said ear cups (12, fig.1), and at least one light-emitting member (28, fig.2) attached to a second of said ear cups (fig.2), said light-emitting members (27,28) being directed so that they can illuminate an area generally along a direction the wearer is looking (col.1, lines 48-

51); at least one switch (15, fig.1 or 33,34 fig.2) attached to one of said ear cups (figs.1 and 2); a power source (col.2, lines 51-55); and conductors (16, fig.1 or 40, fig.2) connecting said light-emitting members (27,28), said switch (15,33,34) and said power source (col.2, lines 23-24 and 46-50); wherein said power source is a battery (col.2, lines 51-55); wherein said power source is a hot outlet (col.2, lines 51-55); wherein said light-emitting members (14,27,28) include a first set of at least one light-emitting member (27 in right ear cup, fig.2) and a second set of at least one light-emitting member (28 in left ear cup, fig.2), and a first switch (34) controlling said first set of light emitting member (27) and a second switch (33) controlling said second set of light emitting member (28); a length of wire (cord in col.2,parag.0025 or wires 7 in parag.0028), at one switch (1, col.2,parags.0022-0024), a plurality of LEDs (2, col.2, parag.0021-0022), a battery holder (mounted in 20) including a battery (col.2, parag.0025) and an circuit diagram (closed connection of these parts) fitted on or in the headset (100).

10. However, EICHOST does not disclose: at least one speaker within said shell and connected to the wire (claim 1); light-emitting diodes (claim 1); a battery attached inside one of said ear cups (claim 2); each of said ear cups having a plurality of light-emitting diodes attached to said ear cups (claim 6).

11. MYERS teaches at least one speaker (26A, 26B, figs.1-2B) within a shell (16A, 16B) and connected to the wire (20 or 70, fig.3) whereby electronic signals can be passed (col.4, lines 13-18) from an adaptor (plug 22) through said wire (20,70) to said at least one of said speakers (26A, 26B) at least for the purpose of reproducing audio

signals from an audio amplifier to produce sounds through the speakers (col.4, lines 55-62). MYERS also teaches an internal power source (46, fig.2A) attached inside one of the ear cups (16A) for the purpose of powering and operating at least the control volume (40) and operation of the speakers (26A, 26B) and indicator light (44).

12. LEHRER teaches a unit (11) of a plurality of light-emitting diodes (33, figs.3 & 4) attached (12, fig.12) to earphones (fig.12, col.3, lines 50-53) for the purpose of providing a lightweight portable reading light that produces high beam output with no humanly detectible heat (col.3, lines 63-65) and because the LEDs with associated circuit are lightweight components (col.5, lines 3-9), while providing listening pleasure to the user.

13. Since EICHOST suggests applying the combination ear covering and dual lighting apparatus within the desired field of head mounted equipment or ear covering apparatus that includes headphones (col.1, lines 6-12) while holding light for illuminating a work area and enhancing the hearing of the wearer (col.1, lines 48-51), it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ear-covering-lighting apparatus of EICHOST to include the type of speakers within the ear-covering shells and connected electrically to the wire and internal power source as taught by MYERS et al in order to enhance the hearing of sound from a cord/wire connected audio signal producing amplifier and therefore enhance the pleasure of the user/wearer while doing a task facilitated visually by the attached lighting apparatus, and facilitated operation and portability of the apparatus with the internal power source.

14. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination ear covering and lighting apparatus of EICHOST to include the type of plurality of light-emitting diodes attached to earphones as taught by LEHRER in order for the wearer/user to read or do a task in an frontal area that is visually illuminated with high beam output with no humanly detectable heat and provide comfort given use of light-weight LEDs.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over EICHOST (US 4,969,069) in view of MYERS et al (US 5,751,825) and LEHRER (US 6,290,368) as applied to claims 1-3, 5 and 6 above, and further in view of SHIMADA et al (US 2001/0021108).

16. Claim 7 recites the light-emitting diodes have an intensity of from about 1000 millicandelas to about 3000 millicandelas, not disclosed by EICHOST modified by MYERS and LEHRER above.

17. SHIMADA teaches user-supported illuminating device having light-emitting diodes (14) in panel (15) provided light housings (5, fig.1, col.4, parag.0063), the LEDs (14) having an intensity of 3 candela (col.4, parag.0064) for the purpose of illuminating a relatively narrow area and short distance (50 cm) with appropriate directivity and intensity. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the headset lighting device of EICHOST to include the type of LEDs of SHIMADA in order to intensely illuminate a relatively narrow area

and short distance (gazing point) so as to have clearly focus and illuminate the task by the wearer or user of the lighting device.

### ***Response to Arguments***

18. Applicant's filing of Declaration under 37 CFR 1.131 is sufficient to overcome the McClanahan (US 2003/0202341 A1) reference, with respect to the rejection(s) of claim(s) 1-6, 8 and 9 under 35 USC 102e have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of previously cited prior art to EICHOST (US 4,969,069) in view of MYERS et al (US 5,751,825) and LEHRER (US 6,290,368), directed to claims 1-3, 5 and 6.

19. Applicant's arguments directed to rejection of claims 8 and 9 under 35 USC 102b as being anticipated by TAKASU (US 2002/0027777 A1) have been fully considered but they are not persuasive. See as follows.

20. In response to applicant's argument that TAKASU does not show or suggest a kit for retrofitting anything, the recitation "A kit for retrofitting a headset having ear cups for hands-free illumination" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150,



152, 88 USPQ 478, 481 (CCPA 1951). Furthermore, paragraph 6 of this Office Action, further states the capability of installation of parts and varying the layout in varying assembly of the headset of TAKASU, with reference to paragraphs 0018 and 0021-0023 in TAKASU.

21. Applicant argues that TAKASU does not show or suggest a circuit diagram, that the figures of TAKASU cannot be considered a circuit diagram, and that there is no disclosure in the text of providing such a diagram, and that Takasu also does not disclose a drilling template for altering an existing headset. In response, TAKASU discloses figures 3 and 4(b) and text that state they are cross-sectional views that adequately illustrate at least parts (38,35,34,36,37) apparently connected to form a circuit and indicated by the text (col.4) the appropriate parts (LED, push switch, battery, terminal(s)). Given the illustrated parts and connections with the aid of indicated text parts, TAKASU adequately discloses a diagram that illustrates at least a circuit with circuit components. Claims 8 and 9 are interpreted broadly and open ended in regards to the claimed subject matter including the circuit diagram. As for TAKASU not disclosing a drilling template, no statement was ever made in the Office Action that TAKASU disclosed any drilling template.

***Allowable Subject Matter***

22. Claims 12-14 are allowed.

23. Claims 4, 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

24. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record as declared under 37 CFR 1.131 suggests: the switch including a first on position permitting at least said first diode set to illuminate and a second on position permitting at least said second diode set to illuminate in combination with the headset of claim 1; a drilling template indicating positions for drilling holes placed adjacent to the ear cups; drilling first and second sets of at least one hole in at least one of the ear cups to accommodate and install a light-emitting diode and switch, respectively, in the holes.

### ***Conclusion***

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

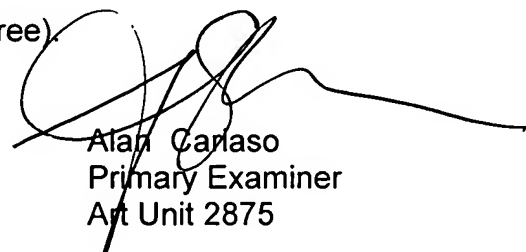
Art Unit: 2875

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan Cariaso  
Primary Examiner  
Art Unit 2875

August 7, 2005  
AC